IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BENNIE ANDERSON,	:	
	:	**Civil Action**
Plaintiff,	:	
	:	**No. 13-903**
v.	:	
	:	
WARDEN OF BERKS COUNTY, and JOE HERMAN (COUNSELOR),	:	
	:	**JURY TRIAL DEMANDED**
Defendants.	:	

PRETRIAL MEMORANDUM OF PLAINTIFF BENNIE ANDERSON

This case is about the violation of Plaintiff Bennie Anderson's First Amendment rights by defendants Warden George Wagner and Joe Herman. While in the Berks County Jail to testify on behalf of Donald Williams in a death penalty murder trial, Anderson was harassed and threatened by jail officers; in violation of jail policy, was fed meals intended to discipline inmates; had his cell stripped in violation of jail policy; and did not timely receive medical care. Defendants mistreated Anderson this way because he was going to testify on behalf of Williams.

Anderson submits this Pretrial Memorandum pursuant to this Court's Scheduling Order of August 9, 2016.

A. Expert Witnesses

Anderson does not intend to present expert testimony.

B. Fact Witnesses

Anderson reserves the right to call the following fact witnesses at trial:

Bennie Anderson

Anderson will testify about the violations of his First Amendment rights by defendants, including that: jail officers threatened him; he was fed nutraloaf, a disciplinary meal, rather than the regular meals he was supposed to receive; his cell was stripped of its bedding and mattress—treatment reserved for inmates on disciplinary status, which he was not on; he was denied medical treatment or received delayed medical treatment despite alerting jail officials that he was not receiving adequate care. Anderson will also testify about why he was being held in the Berks County Jail.

Defendant Warden of Berks County Prison (George Wagner)

Anderson anticipates that Warden Wagner will testify about violations of Anderson's First Amendment rights; his communications with Anderson concerning violations of Anderson's rights; and the fact that Anderson was not on disciplinary status while at the Berks County Jail.

Defendant Joe Herman

Anderson anticipates that Herman will testify about providing Anderson with grievance and communication forms after Anderson complained about violations of his rights; Herman not taking steps to address those violations of Anderson's rights; and communications between Herman and Anderson.

Lt. Miguel Castro

Anderson anticipates that Lt. Castro, the grievance coordinator for the Berks County Jail, will testify about Anderson's grievances; his investigations of Anderson's grievances; and his personal relationship with the victim of Donald Williams, on whose behalf Anderson was subpoenaed to testify.

Paul Yessler

Anderson anticipates that Yessler will testify that Anderson informed Yessler of the violations of his rights and that the Office of the Public Defender informed Warden Wagner of those complaints of mistreatment. Yessler will also testify that he spoke to deputies who said they knew Williams' victim.

Glenn D. Welsh

Anderson anticipates that Welsh will testify that the Office of the Public Defender informed Warden Wagner of Anderson's complaints of mistreatment.

C. Designation of Written or Video Deposition Testimony to be Offered at Trial

Anderson does not intend to designate deposition testimony at trial.

D. Itemized Statement of Damages or Other Relief Sought

Anderson seeks damages for:

- Violations of his First Amendment rights.
- Injuries and pain and suffering as a result of not timely receiving medical treatment and being forced to eat nutraloaf at every meal—acts that were taken in retaliation for Anderson exercising his First Amendment rights.

E. Statement of Anticipated Legal Issues

Anderson will file a motion in limine to preclude defendants from attempting to admit evidence that contradicts or in any way denies any of the facts alleged in Anderson's complaint. Defendants negligently failed to timely file an answer, and, therefore, have admitted all of the facts pleaded in the complaint pursuant to Rule 8(b)(6) of the Rules of Civil

Prodcedure. Anderson's best authority on this issue is *Ragguette v. Premier Wines & Spirits*, 691 F.3d 315 (3d Cir. 2012).[1]

Respectfully submitted,

/s/ Edward J. Sholinsky
Edward J. Sholinsky (Pa. I.D. No. 206561)
SCHNADER HARRISON SEGAL & LEWIS LLP
1600 Market Street, Suite 3600
Philadelphia, Pennsylvania 19103
Telephone: (215) 751-2304
Facsimile: (215) 751-2205
Attorney for Plaintiff Bennie Anderson

[1] By Order dated March 8, 2016, this Court denied defendants' motion to file an untimely answer with affirmative defenses. In the opinion accompanying the Order, this Court held that defendants had waived their affirmative defense that Anderson failed to exhaust his administrative remedies. At the March 15, 2016 status conference, this Court permitted defendants to file their untimely answer.

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of September, 2016, I caused to be served a true and correct copy of the foregoing Pretrial Memorandum of Plaintiff Bennie Anderson to be served by the Court's electronic filing system on the following:

Andrew B. Adair, Esquire
Deasey Mahoney & Valentini LTD.
103 Chesley Drive, Suite 101
Media, PA 19063
Attorneys for Defendants Warden of Berks County and Joe Herman

/s/ Edward J. Sholinsky
Edward J. Sholinsky